

PROGRAM BILL # 31

GOVERNOR'S PROGRAM BILL

2012

MEMORANDUM

AN ACT to amend the legislative law, in relation to redistricting of congressional, senate, and assembly districts

Purpose:

This legislation, entitled the "Redistricting Reform Act of 2012," would amend the legislative law to reform comprehensively and permanently the process and substantive criteria used to establish new state legislative and congressional district lines every ten years. Among other reforms, the legislation would create an independent redistricting commission reflecting both the diversity of the state and the participation of minority party conference appointees and appointees who are not members of either major political party to draw the legislative and congressional district lines; require that new district lines be drawn in such manner as to protect minority voting rights and communities of interest, prohibit partisan gerrymandering, and affirmatively and transparently explain any deviations from average or ideal population sizes of each district; require extensive public hearings around the state and the commission's release of all relevant data and draft plans to facilitate public review and public drafting of proposed district lines; and establish voting rules in both the commission and in each house of the legislature to ensure that minority party conferences participate in and approve of new lines.

Summary of Provisions:

Section 1 provides the title of the Act, the "Redistricting Reform Act of 2012."

Section 2 amends the legislative law by adding a new article 6-A to establish a new and exclusive process by which new state legislative and congressional districts shall be drawn. A new independent redistricting commission, selected pursuant to provisions in the same article, shall submit to the legislature its proposed district plans and the legislature shall vote upon those plans without amendment. If the legislature fails to pass such commission plans, the commission shall revise and submit new district plans to the legislature again for approval without amendment. If the legislature fails to pass such plans, it may then amend such plans and vote upon them as amended. However, any such amendments shall be limited pursuant to section 3 of the statute to affect no more than two percent of the population of any district in such plan.

Section 2 further establishes voting rules to govern each house's vote upon the independent redistricting commission's plans that would protect the minority conferences in each house and ensure the integrity of the commission's plans by requiring approval by more than a majority of members under certain circumstances. In particular, if the speaker of the assembly and the temporary president of the senate are members of two different political parties, approval of a commission's redistricting plan shall require a vote in support of such approval by at least a majority of the members of each house. If the speaker of the assembly and the temporary president of the senate are members of the same political party, then approval of a commission's redistricting plan shall require a vote in support of such approval by at least two-thirds of the members of each house.

Section 2 further establishes substantive principles to govern the drafting and approval of any district plans. Among other principles that must be followed in drawing such district lines, this section would require the commission to consider whether such lines would result in the denial or abridgment of racial or language minority voting rights, would further require that no districts shall be drawn to have the purpose of, or result in, such denial or abridgment, and districts shall be drawn so that racial or language minority groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice; districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties; the commission shall consider the maintenance of cores of existing districts, of pre-existing political subdivisions, and of communities of interest; districts shall contain as nearly as may be an equal number of inhabitants and any deviation in a district shall be explained specifically by the commission; and districts shall be contiguous and as compact in form as practicable.

Section 2 further requires the commission to hold extensive public hearings across the state in specified cities and counties, and to make widely available via the best available technology not only its draft redistricting plans, but also all relevant data in a form that facilitates public review and use to develop alternative redistricting plans for submission to the commission.

Section 2 further provides that the process established in sections 4, 5, and 5-b of the constitution shall govern redistricting in this state except to the extent that a court is required to order changes to a district plan as a remedy for a violation of law.

Section 2 further adds a judicial review provision to establish a 60-day deadline for decisions in this area, to establish that a court may find a district plan invalid in whole or in part if it has been drawn in violation of this article, and to provide that the court shall provide the legislature an opportunity to address such legal infirmity in the first instance.

Section 2 further establishes the nature and structure of the independent redistricting commission. Specifically, the commission shall consist of ten members: two appointees by each of the four legislative leaders and then two appointees selected by the majority of those eight members such that least one appointee made by either of the

Assembly or Senate minority leaders must approve those two members. Neither of those two members shall have been enrolled members of either of the two major political parties in New York State in the last five years. The section further requires that the commission reflects "the diversity of the residents of this state with regard to race, ethnicity, gender, language, and geographic residence" and that the appointing authorities shall consult with organizations devoted to protecting the voting rights of minority and other voters concerning their appointments. The commission members must be registered voters in New York State, but shall not have been in the last three years (a) members of the state legislature or congress or a statewide official or the spouse of any of these elected officials, (b) a state officer or employee or legislative employee; (c) a registered lobbyist; or (d) a political party chairman.

Section 2 further requires that to approve a redistricting plan, the independent redistricting commission must obtain the vote of at least seven of its ten members in support of the plan. If the speaker of the assembly and the temporary president of the senate are members of two different political parties, then the seven or more members who approve a plan must include at least one member appointed by the speaker of the assembly and one member appointed by the temporary president of the senate. If the speaker of the assembly and the temporary president of the senate are members of the same political party, then the seven or more members who approve a plan must include one member appointed by each of the four legislative leaders.

In the event that the commission is unable to obtain seven votes to approve a redistricting plan, the commission shall submit to the legislature that plan (or plans, if two or more plans garnered an equal number of votes) that garnered the highest number of votes in support of its approval. The legislature shall vote upon such plan or plans as follows: if the speaker of the assembly and the temporary president of the senate are members of different political parties, then approval of a plan shall require a vote in support of such approval by at least sixty percent of the members elected to each house; if the speaker of the assembly and the temporary president of the senate are members of the same political party, then approval of a plan shall require a vote in support of such approval by at least two thirds of the members elected to each house.

The independent redistricting commission shall appoint two co-executive directors of the commission by approval of a majority of the members of the commission. If the speaker of the assembly and the temporary president of the senate are members two different political parties, such a majority shall include at least one member appointed by the speaker of the assembly and one member appointed by the temporary president of the senate. If the speaker of the assembly and the temporary president of the senate are members of the same political party, then such a majority shall include at least one member appointed by each of the four legislative leaders.

In the event that the commission is unable to approve one or both of the co-executive directors within 45 days of establishing a quorum of seven commissioners, then, if the speaker of the assembly and the temporary president of the senate are members of two different political parties, then the speaker's appointees shall appoint one co-executive director, the temporary president's appointees shall appoint one co-

executive director, the assembly minority leader shall appoint one co-deputy executive director, and the senate minority leader shall appoint one co-deputy executive director. If the speaker of the assembly and the temporary president of the senate are members of the same political party, then the speaker's and temporary president's appointees shall together select one co-executive director and the minority leaders' appointees shall together select one co-executive director. The co-executive directors shall appoint the commission's staff.

Section 3 provides, in principal part, that any amendments by the senate or assembly to a redistricting plan submitted by the independent redistricting commission, shall not affect more than two percent of the population of any district contained in such plan.

Section 4 provides for specified timeframes within which the different stages in the redistricting process must be completed.

Sections 5 and 6 provide the effective dates of the provisions of the bill.

Existing Law:

The existing provisions governing redistricting are contained in article three of the constitution and section 83-m of the legislative law.

Statement in Support:

This legislation will permanently reform New York's redistricting process with unprecedented independence and transparency, and substantive criteria that for the first time prohibit partisan gerrymandering and protect both minority voting rights and communities of interest.

This legislation would create a new independent redistricting commission to draw the district lines, consisting of ten members: two appointees by each of the four legislative leaders and then two appointees selected by the majority of those eight members. Neither of the latter two members can have been enrolled members of either of the two major political parties in New York State in the last five years. Moreover, at least one appointee by either the assembly or senate minority leader must approve those two members. Accordingly, the commission's composition will ensure unprecedented and substantial roles in drawing the district lines for both the minority party conferences and for citizens who are not major party members.

The legislation further requires that the commission reflects "the diversity of the residents of this state with regard to race, ethnicity, gender, language, and geographic residence" and that the appointing authorities shall consult with organizations devoted to protecting the voting rights of minority and other voters concerning their appointments. The commission members must be registered voters in New York State, but shall not

have been in the last three years (a) members of the state legislature or congress or a statewide official or the spouse of any of these elected officials, (b) a state officer or employee or legislative employee; (c) a registered lobbyist; or (d) a political party chairman. Together, these requirements will ensure that the commission's members are both independent, representative of the State's diverse communities, and sensitive to the critical importance to voters of fair and proper district lines.

To approve a districting plan, the independent redistricting commission must obtain the support of at least seven of its ten members for such a plan. This voting rule ensures that at least three members of the commission who were not appointed by the majority conferences in either house must approve a plan before it is sent to the legislature for a vote.

To ensure greater transparency and public involvement, the commission must hold numerous public hearings throughout the State and, prior to its first hearing, must make publicly available using the best available technology not only its draft plans but also all relevant data to facilitate public review and analysis of those plans, and the development of alternative plans.

The commission's redistricting plans will be drawn according to principles that provide unprecedented restrictions on partisan gerrymandering, and protections for the voting rights of racial and language minorities, and for existing communities of interest. For the first time in New York State, both the commission that draws the district lines and the legislature will be expressly prohibited from creating districts for the purpose of favoring or disfavoring a particular candidate or incumbent or political party. This bill does not repeal the provisions of law governing the legislative task force on demographic research and reapportionment or otherwise in any way change the requirements of law regarding the counting of prisoners for purposes of redistricting.

After the commission's public hearings, the Legislature will receive and approve or disapprove the commission's plans without amendments. If the commission's first plan is rejected, the commission must submit an amended plan, which must be voted upon by the legislature again without amendments. If the commission's second plan is also rejected upon such vote, each house may then amend that plan prior to approval except that such amendments must comply with the substantive principles set forth above and, pursuant to a statute being approved separately in conjunction with this resolution, cannot affect more than two percent of the population of any district in the commission's plan. This structure will provide reasonable restrictions on the legislature's changes to the commission's plans.

If the courts are called upon to review the district lines, this legislation requires that the court find such lines to be invalid in whole or in part if they are not in compliance with the procedural or substantive provisions of this article.

Budget Implications:

This legislation is not expected to have a significant impact on the State's budget.

Effective Date:

With the exception of sections 3 and 4 of this legislation discussed below, this bill shall take effect if and only if the constitutional amendment entitled "Concurrent Resolution of the Senate and Assembly proposing an amendment to article 3 of the constitution, in relation to the establishment of the independent redistricting commission" (hereinafter "the amendment") is not passed a second time by each house by January 30, 2013 for consideration by the voters of the State as set forth below. Specifically, the house that first passed the amendment in 2012 shall vote upon the amendment first in the next session of the legislature and in any event shall do so no later than January 15, 2013. The house that approved the amendment second in 2012 shall also vote upon the amendment second in the next session and in any event no later than January 30, 2013.

If the amendment is passed by both houses, then it shall be considered for approval by the voters and this act shall not take effect except that sections three and four of this act shall then take effect upon the people approving and ratifying such amendment by a majority of the electors voting thereon. If either house fails to pass the amendment for the second time prior to the deadline, then this act shall take effect immediately in its entirety and the governor shall replace the legislative leaders as the appointing authority for the commission for either or both houses that failed to approve the amendment.